

# Post-Termination Review Hearings

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## 19.1 Purpose of Post-Termination Review Hearings

Post-termination review hearings must be conducted by the court when the child remains in foster care following termination of parental rights. The court must review the progress being made toward adoption or other permanent placement. MCL 712A.19c(1); MSA 27.3178(598.19c)(1).

## 19.2 Appearance of Lawyer-Guardian Ad Litem for Child

The court must appoint a lawyer-guardian ad litem to represent the child, and the child may not waive the assistance of a lawyer-guardian ad litem. MCL 712A.17c(7); MSA 27.3178(598.17c)(7). MCL 712A.17d(1)(g); MSA 27.3178(598.17d)(1)(g), provides that the lawyer-guardian ad litem must attend all hearings, including post-termination review hearings, and substitute representation for the child only with court approval. See also MCL 712A.17c(9); MSA 27.3178(598.17c)(9) (the court shall not discharge the child's lawyer-guardian ad litem, unless for good cause, while the child is subject to the jurisdiction, control, or supervision of the court, Michigan Children's Institute, or other agency).\*

\*See Sections 7.10–7.11 for a detailed discussion of the powers and duties of lawyer-guardians ad litem.

## 19.3 Time Requirements for Post-Termination Review Hearings

Unless a child is in a permanent foster family agreement or is placed with a relative in a placement intended to be permanent,\* review hearings must be held not more than 91 days following termination of parental rights to the child and every 91 days thereafter as long as the child is subject to the jurisdiction, control, or supervision of the court, the Michigan Children's Institute, or other agency. MCL 712A.19c(1)–(2); MSA 27.3178(598.19c)(1)–(2).

\*See Section 19.4, immediately below.

**Note:** The court rule governing post-termination review hearings, MCR 5.974(J), states that post-termination review hearings must be conducted every 182 days “as required by MCL 712A.19c; MSA 27.3178(598.19c).” The statute was amended in 1998 to require review hearings every 91 days following termination of parental rights. See 1998 PA 479, effective March 1, 1999.

## 19.4 Time Requirements When Child Is Subject to “Permanent Foster Family Agreement” or in Relative Placement Intended to Be Permanent

If a child is in a “permanent foster family agreement” or is placed with a relative in a placement intended to be permanent, the court must hold review hearings not more than 182 days following a permanency planning hearing and every 182 days thereafter, as long as the child remains subject to the jurisdiction, control, or supervision of the court, Michigan Children’s Institute, or other agency. MCL 712A.19(4); MSA 27.3178(598.19)(4).

These review hearings must be conducted following the same procedures as are used at dispositional review hearings. See MCL 712A.19(5), (6), (8), and (9); MSA 27.3178(598.19)(5), (6), (8), and (9).\*

A “permanent foster family agreement” is an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the Family Independence Agency. MCL 712A.13a(1)(h); MSA 27.3178(598.13a)(1)(h). The agreement must be among all of the following:

- (i) the child;
- (ii) if the child is a temporary ward, the child’s family;
- (iii) the foster family; and
- (iv) the child placing agency responsible for the child’s care in foster care.

MCL 712A.13a(1)(h)(i)–(iv); MSA 27.3178(598.13a)(1)(h)(i)–(iv). For the requirements for Permanent Foster Family Agreements, see *FIA Services Manual, Children & Youth*, Item 722.7, p 20.

## 19.5 Notice Requirements

Although there is no notice provision that expressly applies to post-termination review hearings, MCR 5.921(B)(1) requires that certain persons be notified of hearings during child protective proceedings. Included among those persons required to be notified is the respondent-parent and his or her attorney, who would clearly not be entitled to notice of a review hearing

\*See Section 19.5, immediately below (notice requirements), and Chapter 16, Parts I–III (dispositional review hearings).

following termination of the respondent's parental rights. See MCR 5.921(B)(1)(b). However, the court should ensure that the following persons are notified of each hearing:

- F a parent or guardian, if any, other than a parent whose parental rights have been terminated;
- F the child or the attorney for the child;
- F the petitioner;
- F the guardian ad litem or a party appointed pursuant to the court rules; and
- F any other person the court may direct to be notified.

See MCR 5.921(B)(1)(c)–(g).

**Note:** The court is required to appoint a “lawyer-guardian ad litem” for the child. In some circumstances, the court may also appoint an “attorney,” and/or a “guardian ad litem.” See MCL 712A.13a(1)(b), (e), and (f); MSA 27.3178(598.13a)(1)(b), (e), and (f). For purposes of a required notice, “attorney” includes “lawyer-guardians ad litem.” The appointment of counsel for a child is discussed in detail in Sections 7.10–7.13.

For children in “permanent foster family agreements” or relative placements intended to be permanent under MCL 712A.19(4); MSA 27.3178(598.19)(4), the notice provisions of MCL 712A.19(5); MSA 27.3178(598.19)(5), apply. In addition to those persons listed above, the agency, the foster parent or custodian of the child, and the elected leader of the Indian tribe (if tribal affiliation has been determined), must be notified. MCL 712A.19(5)(a), (b), and (g); MSA 27.3178(598.19)(5)(a), (b), and (g).

## 19.6 Required Findings and Conclusions Following Review Hearings

The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders as it finds necessary in the best interests of the child. MCR 5.974(J).\*

\*See Benchnotes 2 and 3 for a discussion of “reasonable efforts” findings.

## 19.7 Orders Entered Concerning Placement of Child for Adoption While Rehearing or Appeal Is Pending

A child may not be placed in a home for purposes of adoption until an order terminating parental rights has been entered under either the Juvenile Code or the Adoption Code. MCL 710.41(1); MSA 27.3178(555.41)(1). After an order terminating parental rights has been entered, the court may enter appropriate orders under the Adoption Code, including an order placing the

\*See Section 21.5 for a discussion of time requirements for filing appeals following termination of parental rights.

child for purposes of adoption, even though a petition for rehearing or an appeal of right may be or has been filed. MCL 710.41(1)–(2); MSA 27.3178(555.41)(1)–(2).

However, if the child is placed in a home for purpose of adoption and a petition for rehearing or an appeal of right may be or has been filed,\* the court, the Family Independence Agency, or the child-placing agency must notify the prospective adoptive parents that an order for adoption will not be entered until one of the following occurs:

(a) the petition for rehearing is granted, at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the period for appeal as of right to the Court of Appeals has expired without an appeal being filed;

(b) the petition for rehearing is denied and the period for appeal as of right to the Court of Appeals has expired without an appeal being filed; or

(c) there is a decision of the Court of Appeals affirming the order terminating parental rights.

MCL 710.41(2)(a)–(c); MSA 27.3178(555.41)(2)(a)–(c). This is commonly referred to as “legal risk adoption.”

## **19.8 Inclusion of Child on Registry of Children Available for Adoption**

If an adoptive family has not been identified within 90 days of the entry of the order terminating parental rights, the child must be included in the registry of children available for adoption. MCL 722.954b(2); MSA 25.359(4b)(2), and MCL 722.958; MSA 25.359(8).